No. _____

In The

Supreme Court of the United States

MIKE ADAMS,

Petitioner,

vs.

GROESBECK INDEPENDENT SCHOOL DISTRICT,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The issue presented to this Court on appeal is as follows:

The Judgment entered on January 9, 2007 in "*Mike Adams v. Groesbeck Independent School District*", 475 F.3d 688, 2007 WL 49554, 99 Fair Empl. Prac. Cas. (BNA), 89 Empl. Prac. Dec. P-42,663, 216 Ed. Law Rep. 83 (C.A.5 (Tex.), conflicts with the decision of the United States Supreme Court, to-wit: *Burlington Northern & Sante Fe Railway Co. v. White*, 126 S.Ct. 2405, 165 L.Ed.2d 345, 74 USLW 4423, 98 Fair Empl. Prac. Cas. (BNA) 385, 87 Empl. Prac. Dec. P 42, 394, 06 Cal. Daily Op. Serv. 5312, 6 Daily Journal D.A.R. 7866, 19 Fla. L. Weekly Fed. S. 326 (U.S. June 22, 2006).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Mike Adams respectfully prays that this Supreme Court issue a petition for a writ of certiorari to review the opinion and judgment of the Fifth Circuit, entered on January 9, 2007. Petitioner timely filed a Petition for Rehearing in the Fifth Circuit, which was denied on February 23, 2007.

OPINIONS BELOW

The Opinion of the Fifth Circuit is reported at 475 F.3d 688 (5th Cir. 2007). The relevant orders of the district court are unpublished and are reprinted and are reprinted in Petitioners' Appendix at App. 11-15.

STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C.A. § 1254(a).

STATUTORY PROVISIONS INVOLVED

The Civil Rights Act of 1964, § 704(a), 42 U.S.C.A. § 2003-3(a), which, in pertinent part, forbids an employer from "discriminating against" an employee or job applicant[1] because that individual "opposed any practice" made

[1] Mike Adams was a "job applicant" and he had previously "participated in a Title VII proceeding or investigation."

unlawful by Title VII or "made a charge, testified, assisted or participated in" a Title VII proceeding or investigation.

STATEMENT OF THE CASE

In the case at bar, Plaintiff Mike Adams ("Adams") alleged that the "GISD" retaliated against him under Title VII when the GISD failed to rehire him in January, 2002.

Adams and his wife, Allison ("Allison"), had previously filed a lawsuit against the Groesbeck Independent School District ("GISD") in 1999 ("*Adams I*"). *Adams I* included allegations of violations of Title VII (discrimination and retaliation), Title IX, and First Amendment rights under the United States Constitution. The suit was settled in January of 2001, before it proceeded to trial. The "Mutual Release of All Claims" executed by the parties (1) precluded all parties from asserting any claims that had arisen prior to January 15, 2001, and (2) that could have been litigated in the lawsuit. Specifically, the Release stated as follows:

> "It is further understood and agreed that, unless otherwise expressly stated herein, the claims released by Claimants hereunder do not include any claims against a Released Party which may arise by reason of actions of a Released Party in the future, including but not limited to actions occurring after January 15, 2001, including but not limited to claims involving republication or redistribution by a Released Part of statements or writings made prior to January 15, 2001."
>
> . . .

> "In consideration of Claimants' release of claims set forth above and the agreements of Claimants contained herein, the Groesbeck ISD, Little, McBay, and Rosas fully and completely release Claimants of and from any and all claims of any type existing prior to or as of January 15, 2001, relating to, or connected with all occurrences, events occurring prior to January 15, 2001, and including all claims which could have been asserted by the Groesbeck ISD, Little, McBay, and Rosas." (See MUTUAL RELEASE OF ALL CLAIMS, Ex. 1, App. 51-52)

The settlement agreement executed by the parties did ***not*** prohibit Adams from reapplying for employment with the GISD. (See Ex. 3, App. 64) Adams had been terminated from his employment with the GISD in 2000. Throughout the *Adams I* lawsuit and the settlement of the lawsuit, Allison continued to teach science and coach the middle school female athletes.

During the time that Adams was employed in the middle school girls athletics program, there were three positions for teacher/coaches in the program; and there were four positions for teacher/coaches in the mens athletics program. When Adams was demoted and then terminated, the GISD did not fill Adams' position for the 2000-2001 year. After the settlement agreement was consummated, Adams submitted an application for employment with the GISD and Adams' application for employment was supposed to be active for 365 days if a position became open.

In October of 2001, Allen Grimes, a middle school teacher and girls coach, was placed on administrative leave after the GISD received a complaint from a parent of

a middle school female athlete. When Grimes was placed on administrative leave, Allison was the only teacher/ middle school girls coach left in the middle school girls athletic program. Allison assumed all the duties and responsibilities of the girls program which involved coaching 70-80 female athletes each school day. When Grimes' employment was terminated in December of 2001, Allison continued to carry the full load of the girls athletic program until the end of the spring semester of 2002.

In October of 2001, Adams submitted copies of a second application seeking employment as a teacher/coach with the GISD to the following administrators: the Personnel Officer for the District (See Adams' second application for employment, Ex. 8, App. 65); Glynis Rosas, Superintendent, Karen Golden, the Middle School Principal, and Richey Coutrer, the Athletic Director. None of these GISD officials ever acknowledged that Adams submitted an application for a position as a middle school teacher/coach in October of 2001.

The GISD argued that there was not an "available" position after Grimes was discharged from his employment. To the contrary, it was clear from the following evidence presented by GISD officials that Grimes' position was "available." For example, Superintendent Rosas acknowledged that Grimes' position was vacant as of December 21, 2001. (Tr. 353) Rosas also admitted that the money budgeted for Grimes' position was still "available" after December 21, 2001. She also admitted that there was no shortfall or anything that required cutting the budget. (Tr. 348) She testified that she did not know that Mike Adams had submitted an application for a position as middle school girls teacher/coach and that the application had been delivered on October 22, 2001 to her Personnel

Officer who worked in the Superintendent's office. She also stated that she did not hear anything about Adams' October, 2001 application even though Adams had sent copies of his application by certified mail to Coutrer, to Rosas' home and to all GISD Board members. (Tr. 348-350) Adams testified that he mailed copies of his October 19th application to Ms. Rosas, Mr. Coutrer and all of the Board members by certified mail, as well as delivering a copy to the GISD personnel office. (Tr. 349-351) Rosas was also unable to explain why the substitute, Mr. Milnes, was being paid from the coaching budget when he was not providing any coaching services for the middle school girls athletic program.

Furthermore, Karen Golden, the Middle School principal testified that, by December of 2001, she knew that she was going to want to hire another special education teacher on her staff. (Tr. 380) Since Golden had been Adams' supervisor during the time that he was employed as a teacher/coach from 1998 through 2000, she should have been aware that Adams was eligible to teach special education and Adams had taught special education prior to his leaving the GISD. If Golden had wanted to hire a special education teacher on her staff, why didn't she consider Adams' application for the spring semester of 2002? Rosas had already stated in her recommendation letter drafted as a part of the settlement in *Adams I* that Adams had received good teaching evaluations throughout his employment with the GISD. (See Rosas' letter, Ex. 2, App. 61-62)

Finally, Allison testified that, in a telephone conversation relating to the need for assistance in the middle school girls athletic program, Richey Coutrer stated that he had no applications from any "qualified applicants" to

help Allison. When Allison confronted Coutrer, stating that Mike Adams was a qualified applicant, Coutrer responded that "he (i.e., Coutrer) could not hire Adams because of the *Adams I* lawsuit." (Tr. 121-122)

Adams contends that he presented sufficient evidence to support the jury's verdict and the trial court's judgment on the jury's verdict. (See District Court Judgment, signed on June 30th, 2004; App. 11) On September 4, 2004, the District Court entered an Amended Judgment. (See District Court Amended Judgment, signed on September 3, 2004; App. 12)

Post-judgment matters in the District Court were completed in April of 2005.

The Record on Appeal was certified and transmitted to the Fifth Circuit Court of Appeals on July 7, 2005. Briefing was completed and the case was submitted to the Fifth Court of Appeals, on February 8, 2006.

On appeal, Adams included a cross appeal of the district court's judgment on two grounds: (1) that the damages awarded by the jury and the district court were based on a non-certified teacher's salary as opposed to the higher salary of a certified, experienced teacher/coach such as Adams; and (2) that the final district court's judgment did not provide injunctive relief sufficient to deter further discrimination and/or retaliation against Adams.

On January 9, 2007, the Fifth Circuit Court of Appeals reversed the Judgment of the District Court, and entered Judgment that Adams take nothing from his suit in the District Court. In reversing the Judgment of the District Court, the Fifth Circuit Court of Appeals ruled that:

"Adams failed to establish retaliation as a matter of law because there was no 'available' position for which he applied. Because no reasonable jury could have found that there was an available position, we REVERSE and RENDER judgment in favor of Groesbeck."

STATEMENT OF FACTS

This case involves allegations of retaliation arising out of two lawsuits: *Adams I* (which settled prior to trial in 2001) and *Adams II* (cited as 475 F.3d 688) (5th Cir. 2007) which is the basis for this petition for certiorari).

***Adams I*:**

Mike Adams ("Adams") was employed beginning in 1971 as a science teacher with the Groesbeck Independent School District ("GISD"). In 1972, Adams became a member of the coaching staff in the GISD.[2] In 1980, after Title IX was enacted, Adams became the Girls Athletic Director and he continued to teach and to coach female athletes. In 1991, Adams married Allison Bower ("Allison"), a teacher/coach employed by the GISD; and Adams and Allison worked together coaching female athletes at the high school level. Adams consistently sought to achieve equity in the high school and middle school girls athletic programs. For example, Adams persisted in seeking to improve the budget for equipment, uniforms, etc. for the female athletes. Adams also sought to improve coaching stipends to attract coaches that would enhance the skills

[2] All coaches in the GISD were also required to teach classes throughout Adams' tenure with the District.

of the female athletes. In 1996, the GISD high school girls basketball team and the GISD high school girls track team won two State championships – in basketball and track.

In 1997, Allison was **not** rewarded for a job well done. Instead, Allison was suddenly reassigned/demoted to coach and teach in the GISD middle school.

In 1998, the GISD Board of Trustees decided to combine boys and girls athletics under a single Athletic Director. As expected, the Head Football Coach was chosen to serve as the Athletic Director.

In 1998, Adams was reassigned/demoted to the middle school to assume the duties of the GISD Middle School Girls Athletic Coordinator. In June of 1999, Adams' two-year contract was not extended for a renewal term. After Adams' contract was not extended, Mike and Allison Adams filed a lawsuit against the GISD, i.e., *Adams I*. Adams' contract was terminated by the GISD at the end of the 1999-2000 school year.

Adams I included allegations of violations of Title VII, Title IX, and First Amendment rights under the United States Constitution. The suit was settled in January of 2001, before it proceeded to trial. The settlement document was entitled "Mutual Release of All Claims" and it included (1) any and all claims that had arisen against any party prior to January 15, 2001 and (2) that could have been litigated in the lawsuit. The agreement was reduced to writing and signed by all parties to the suit, including both of the Adams, the GISD, two GISD board members, and the GISD superintendent. (See Ex. 1, App. 49; and Ex. 3, App. 61 and Ex. 2, 64)

***Adams II*:**

Under the *Adams I* settlement agreement, Adams was *not* prohibited from reapplying for employment with the GISD. Shortly after the settlement agreement was fully executed, Adams submitted an Application for a position as a teacher/coach in the GISD middle school. Adams' application for a teacher/coach position was supposed to remain active with the GISD for 365 days.

Prior to the *Adams I* lawsuit, the middle school girls program was supposed to have three teacher/coaches on staff and the middle school boys program was supposed to have four teacher/coaches on staff. At the beginning of the 2001-2002, the middle school girls athletic program was operating with only two teacher/coaches but the middle school boys program was fully staffed with four coaches. After Adams filed his application for a teacher/coach position in the middle school, Adams was not called for any interview, nor did the GISD acknowledge that Adams had applied to fill the third teacher/coach position that remained vacant throughout the 2001-2002 school year. Adams was unemployed in 2001 even though he was imminently qualified to teach and coach in the middle school.

On or about October 19, 2001, Allen Grimes, a teacher/coach in the middle school girls program, was placed on administrative leave while the GISD investigated a complaint from a parent of a middle school female athlete. As a result, Allison, the only teacher/coach on staff in the middle school girls athletics program, was forced to assume all coaching duties/responsibilities for two months during the time that Grimes was on paid administrative leave.

Immediately after Grimes was placed on administrative leave, i.e., on or about October 22, 2001, Adams submitted a second application seeking a teacher/coach contract with the GISD in the event that Grimes' employment might be terminated as a result of the pending administrative investigation. Adams delivered copies of his October application to Board members of the GISD, to the Personnel Office, and to the GISD Administration, including the Superintendent, Glynis Rosas, and the Athletic Director, Richey Coutrer. (See Employment Application of Mike Adams, date-stampled and rec'd by GISD on 10/22/01, App. 65.)

Grimes resigned in December of 2001 at the end of the fall semester of the school year. After Grimes resigned, two of the three full-time positions for teacher/coaches in the middle school girls program were vacant, and Allison was the only middle school teacher/coach for female athletes. No official of the GISD ever responded in any manner to Adams' second application for employment to provide teaching and coaching during the 2002 Spring semester.

After Grimes resigned at the end of the fall semester, GISD officials met to decide how to address Grime's teaching and coaching responsibilities for the Spring 2002 semester. The evidence educed at trial showed that GISD officials clearly knew that Adams had applied to contract with the GISD as a teacher/coach – at least for the spring 2002 semester.

Instead of hiring Adams for the spring semester of 2002, the GISD set about to (a) reassign Grimes' students to other classes, (b) a teacher's aide, Mr. Milnes, was assigned to assist teachers who received Grimes' students, (c) Milnes was not a certified teacher nor did he have any

coaching experience, (d) Milnes performed ***no*** coaching duties during or after school, e.g. washing uniforms, teaching athletics skills, transporting female middle school athletes, supervising the female student athletes at games, etc. (Tr. 115-116), (e) teachers/coaches who were assigned to the high school girls athletic program were paid stipends over and above their salaries for providing assistance to the middle school female athletes and to assist Allison with the coaching of middle school female athletes, but Allison never received any additional pay for her extra services, i.e., washing uniforms, teaching athletics skills, transporting female middle school athletes, supervising the female student athletes at games, etc. (Tr. 115-116), all of which Allison had to perform because of the GISD's deliberate acts of retaliation against Adams (and Allison). In sum, the GISD gerrymandered the middle school girls athletic program so that Allison would have to carry the lion's share of coaching responsibilities both during school time and in after-school activities, as well as shouldering her teaching responsibilities for five science classes. (Tr. 262-266)

In a telephone conversation in February, 2002, between the GISD's Athletic Director, Richey Coutrer and Allison, Coutrer told Allison that he "couldn't hire Mike Adams because of the lawsuit," referencing *Adams I*, cited supra. (Tr. 121-122)[3]

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[3] In Coutrer's testimony at trial, he admitted that Adams had sent him a cover letter and an application dated October 19, 2001 (Tr. 296-297); and Coutrer also admitted that he did not correspond with Adams in any way to advise him that there were no positions open (Tr. 310-312), even though there were actually two positions vacant for coaches in the girls middle school athletic program. (Tr. 262-264)

In July, 2002, Adams filed another Charge with EEOC. Adams' Charge alleged that the GISD had subjected him to discrimination based on "retaliation" for his having filed the previous *Adams I* lawsuit, when the GISD failed to rehire him in "January of 2002."

On or about April 28, 2003, Adams filed the *Adams II* lawsuit. Allison was not willing to be a Plaintiff in the lawsuit.[4] Adams proceeded to trial in September, 2004.

STANDARD OF REVIEW

The District Court's denial of Groesbeck's motion for Judgment as a matter of law is reviewed *de novo*, applying the same standards as the district court. *Int'l Ins., Co. v. RSR Corp.*, 426 F.3d 281, 296 (5th Cir. 2005). The court must "draw all reasonable inferences and resolve all credibility determinations in the light most favorable to the nonmoving party," and the jury verdict must be upheld unless "there is no legally sufficient evidentiary basis for a reasonable jury" to have found for the nonmovant. Fed.R.Civ.P. 50(a)(1); *RSR Corp.*, 426 F.3d at 296-297.

ARGUMENT AND AUTHORITIES

This case proceeded to a jury in the District Court and the jury found in favor of Mike Adams. The District Court

[4] Adams was still unemployed and Allison was the only breadwinner of the Adams' family. Thus, Allison opted to participate as a witness but not as a party in *Adams II*, fearing that she would be subjected to intimidation of her and her family.

entered its Judgment on the jury's verdict. On appeal in the Fifth Circuit, the court reversed the District Court's Judgment, and held that, as a matter of law, Adams failed to establish retaliation (1) because there was no "available" position for which he applied, and (2) because no "reasonable jury" could have found that there was an "available" position.

Adams contends that there was sufficient evidence for the jury to find that there was an "available" position for a middle school teacher/coach in the fall semester of 2001, and that Adams applied for a position as a teacher/coach for the spring semester of 2002 before Grimes resigned in December of 2001, and that Adams (and his family) suffered a material adverse employment action as a result of the GISD's refusal to hire Adams as a teacher/coach for the spring semester of 2002.

The Fifth Circuit's Judgment entered on January 9, 2007, in "*Mike Adams v. Groesbeck Independent School District,*" at 475 F.3d 688 (5th Cir. 2007), conflicts with the decision of the United States Supreme Court, to-wit: *Burlington Northern & Santa Fe Railway Co. v. White,* 126 S.Ct. 2405, entered on June 22, 2006.

On Page 5 of the Fifth Circuit Court's Judgment in this case, the Court stated:

> "Groesbeck argues that Adams did not apply for an "available" position, because the middle school had decided not to fill Grimes's spot in the spring semester. Consequently, Adams could not prove that he endured an adverse employment action by Groesbeck.
>
> . . .

> "To establish a Title VII retaliation case, Adams was required to prove that he engaged in protected activity; he suffered from an adverse employment action; and there was a causal connection between the activity and the adverse employment decision. *Haynes v. Pennzoil Co.*, 207 F.3d 296, 299 (5th Cir.) . . . *Bryant v. Compass Group USA, Inc.*, 413 F.3d 473, 476 (5th Cir. 2005), *cert. denied*, 126 S.Ct. 1027 (2006)."

In *Haynes v. Pennzoil Co.*, the Plaintiff asserted Title VII claims of retaliation and discrimination. The Fifth Circuit Court held that in order for a Plaintiff to prove a prima facie case in a retaliation claim the employee must show: (1) that the employee engaged in activity protected by Title VII, (2) the employer took adverse employment action against the employee, and (3) a causal connection exists between the protected activity and the adverse employment action . . . . , citing, *inter alia*, *Mattern v. Eastman Kodak Co.*, 104 F.3d 702, 705 (5th Cir. 1997).

In this Supreme Court's decision in the *Burlington Northern & Santa Fe Railway Co.* case, cited supra, the Supreme Court expressly abrogated the *Mattern v. Eastman Kodak Co.* case, and held that "the application of Title VII retaliation provision is not limited to employer's employment-related or workplace actions," and "the scope of retaliation provision is broader than that of Title VII's substantive discrimination provision." (*Burlington*, at p. 2406-2407) Since the *Haynes* case relied on *Mattern v. Eastman Kodak Co.*, it follows that *Haynes* contains dicta (at p. 299) that should no longer be applicable to cases involving the "anti-retaliation" provision of Title VII.

On Page 6 of the Fifth Circuit Court's Judgment in this case, the Court stated:

> "Adams' case was built on the contention that Groesbeck failed to hire him as a coach in the Spring 2002 Semester in retaliation for his previous successful Title VII suit against the district. His case breaks down if Groesbeck did not have an opening for a full-time middle school coach at that time. An employer does not discriminate or retaliate illegally if it has no job opening. *See Perez v. Region 20 Educ.Serv.Ctr.*, 307 F.3d 318, 325 (5th Cir. 2002) . . . *Haynes*, 207 F.3d at 300-01 . . . "

The *Perez* case, cited by the Fifth Circuit Court, stated that "it did not promote Perez or reclassify his position because the position of Database Administrator within the RSCCC group was never approved for funding and, therefore, the position did not exist." (at p. 325) In *Haynes*, cited by the Court, the record at trial supported Pennzoil's contention that (1) "four attorney positions . . . were filled by Pennzoil after [Haynes] submitted an application for a legal position . . . All four attorneys hired by Pennzoil had experience as oil and gas attorneys"; and (2) a legal assistant was promoted to an attorney position after Haynes had been discharged. Thus, *Haynes* failed to establish a prima facie case of racial discrimination under Title VII.

If this court reviews all of the evidence presented in the district court, this Supreme Court should reverse the Judgment of the Fifth Circuit, and enter Judgment in favor of Mike Adams and/or remand this case for new trial.

In this case, i.e., *Adams II,* the GISD did have two vacant "available" positions for middle school teacher/coaches to coach middle school female athletes. One of the middle school teacher/coach's positions became vacant and available when Adams' was terminated in June of 2000.

The second vacant position was available after Grimes tendered his resignation in December of 2001.

The GISD Athletic Director, Coutrer acknowledged that there were supposed to be three coaches for the middle school girls program and that one of those positions had not been filled since the summer of 2001, after the Adams settled their lawsuit against the GISD. Further, Coutrer knew that Grimes had resigned and that meant that his position had become "vacant" and "available" in December of 2001 and Allison became the only coach assigned to the middle school girls athletic program.

Superintendent Rosas acknowledged that Grimes position was *"vacant"* as of December 21, 2001. (Tr. 353) Rosas also *admitted that the money budgeted for Grimes' position was still available after December 21, 2001.* Rosas also admitted that there was no shortfall or anything that required cutting the budget. (Tr. 348) She claimed that she did not know that Adams had submitted an application for a position as middle school girls teacher/coach and that the application had been delivered on October 22, 2001 to her Personnel Officer. Adams had sent copies of his application to Coutrer, to Rosas' home, and to all GISD Board members. (Tr. 348-350) Finally, Rosas was unable to explain why a substitute teacher aide, Milnes, was being paid from the coaching budget even though he had never performed services for the middle school girls athletic program.

Karen Golden, the Middle School Principal, testified that, by December of 2001, she knew that she was going to want to hire another special education teacher on her staff. (Tr. 380) Since Golden had been Adams' supervisor during the time he was employed as a teacher/coach in the

middle school (i.e., 1998-2000), she should have been aware that Adams was eligible to teach special education and had taught special education prior to the termination of his contract with the GISD in June of 2000. Rosas had already stated in her recommendation letter that Adams had received good teaching evaluations throughout his employment with the GISD. Nonetheless, Golden testified that she viewed Adams' application for employment as being "just for the coaching position."[5]

Beginning in June of 2000, and then in December of 2001, the GISD had two vacant positions for teacher/coaches in the girls middle school athletic program. Instead of filling one of the positions for the spring semester of 2002, GISD administrators shifted the vast majority of the workload relating to coaching duties for middle school female athletes to Allison without any increase in pay.

When Allison complained to Coutrer about the need for another coach, Coutrer "allegedly" responded that "there were no qualified applicants to help her" and that "he could not hire her husband because of the previous lawsuit."[6]

Adams proceeded to trial in the District Court, there was no U.S. Supreme Court Judgment in the *Burlington Northern & Santa Fe Railway Co. v. White,* 126 S.Ct. 2405,

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[5] Even The Fifth Circuit Court stated in its Judgment (at p. 2) that "Groesbeck requires that its coaches also teach."

[6] Allison testified *specifically* – not "allegedly" – to the statements made to her by Coutrer and Allison immediately chronicled the statements made by Coutrer on her calendar that she kept relating to events that occurred in connection with her work.

entered on June 22, 2006. Since June 22, 2006, this case should be governed by the Supreme Court's Opinion in *Burlington Northern & Santa Fe Railway Co. v. White*, wherein Justice Breyer stated:

> ". . . . [Title VII's] anti-retaliation provision forbids an employer from "discriminat[ing] against" an employee or **job applicant** because that individual "opposed any practice" made unlawful by Title VII or "Made a charge, testified, assisted or participated in" a Title VII proceeding or investigation. § 2000e-3(a).
>
> "The Courts of Appeals have come to different conclusions about the scope of the Act's anti-retaliation provision, particularly the reach of its phrase 'discriminate against.' Does that provision confine actionable activity that affects the terms and conditions of employment? And how harmful must the adverse actions be to fall within its scope?
>
> "We conclude that the anti-retaliation provision does **not** confine the actions and harms it forbids to those that are related to employment or occur at the workplace. We also conclude that the provision covers those (and only those) employer actions that would have been materially adverse to a reasonable employee or **job applicant**. In the present context that means that the employer's actions must be harmful to the point that they could well dissuade a reasonable worker from making or supporting a charge of discrimination." (at p. 2411)
>
> . . .
>
> "For these reasons, we conclude that Title VII's substantive provision and its anti-retaliation

> provision are ***not*** coterminous. The scope of the anti-retaliation provision extends beyond workplace-related or employment-related retaliatory acts and harm. We therefore reject the standards applied in the Courts of Appeals that have treated the anti-retaliation provision as forbidding the same conduct prohibited by the anti-discrimination provision and that have limited actionable retaliation to so-called 'ultimate employment decisions.'" (at p. 2414)
>
> . . .
>
> "The anti-retaliation provision protects an individual not from all retaliation, but from retaliation that produces an injury or harm . . . In our view, a plaintiff must show that a reasonable employee would have found the challenged action materially adverse . . . " (at p. 2415)

In the instant case, the Adams' settlement agreement did not prohibit Adams from seeking employment with the GISD after the settlement was executed. Following the execution of the GISD settlement agreement, Adams submitted an application to fill a position in the middle school as a teacher/coach but he never heard a word from anyone as to the status of one, and then two vacant positions in the middle school. In the meantime, the administration of the GISD required Allison to single-handedly perform the duties and responsibilities of all three staff positions that were so-called "unavailable" in the GISD middle school, including coaching and teaching. The Administration even admitted that there were no budgetary constraints that prevented them from filling at least one of the two vacant positions.

The situation affecting the Adams family was materially adverse and the Adams family should be compensated for the adversity. In summary, the Adams' family were denied "unfettered access" to Title VII's remedial mechanisms and they should be fully compensated for the injuries sustained by them.

REASONS FOR GRANTING THIS PETITION

Retaliation claims are clearly on the rise. While the overall number of discrimination charges being filed with the Equal Employment Opportunity Commission ("EEOC") has declined in recent years, the percentage of charges based on retaliation has steadily increased over the past three years.

In *Burlington Northern Santa Fe Railroad Co. v. White*, cited supra, the Supreme Court broadened the types and nature of employer actions that may constitute retaliation. The decision has been widely hailed as a victory for plaintiffs. However, the Adams family has suffered defeat at the hands of the Fifth Circuit's Judgment and Opinion reversing the District Court's Judgment in *Adams II*.

In *Adams II*, the Fifth Circuit Court seems to have "*assumed*" that there were no "available" positions for which Adams applied, when, in fact, Adams had submitted not only one, but two applications for employment in the GISD middle school. When the Supreme Court broadened the types and nature of employer actions that may constitute retaliation, the Supreme Court specifically noted that:

> "We conclude that the anti-retaliation provision does not confine the actions and harms it forbids to those that are related to employment or occur at the workplace. We also conclude that the provision covers those (and only those) employer actions that have been materially adverse to a reasonable employee ***or job applicant***. (emphasis added) In the present context that means that the employer's actions must be harmful to the point that they could well dissuade a reasonable worker from making or supporting a charge of discrimination." (*Burlington*, at p. 2409)

Sec. 704(a) sets forth Title VII's anti-retaliation provision in the following terms:

> "It shall be an unlawful employment practice for an employer *to discriminate against* any of his employees ***or applicants*** for employment . . . because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under this subchapter."
>
> § 2000e-3(a) (emphasis added.)

Adams was not prohibited from applying for a position with the GISD after the settlement agreement between the Adams and the GISD was executed, but, when Adams submitted his applications for employment, the GISD claimed that there were no positions "available" at the time. When it became crystal clear that Adams was going to pursue his right to apply for a middle school teacher/ coach position, and there were two "vacant" positions that needed to be filled, the GISD circumvented the application process and denied Adams the right to compete for the

positions that were "vacant" and would remain "vacant" so long as he was interested in being re-employed with the GISD. The GISD never recognized Adams' right to ***apply*** for employment with the GISD, even though the settlement agreement between the Adams and the GISD did not prevent Adams from applying for a position that was vacant and Adams was qualified to perform the duties of the position(s) that were vacant. When the GISD refused to acknowledge Adams' applications for employment, Adams filed an EEOC charge of retaliation and Adams proceeded to trial before a jury that found that:

> " . . . the Groesbeck Independent School District in January of 2002 failed to hire Mike Adams for an available position because he had previously filed a lawsuit complaining about unlawful discrimination?"

and the jury answered "Yes" to that question.

This Supreme Court must reverse the Judgment of the Fifth Circuit and grant such other and further relief to which Mike Adams may show himself entitled.

PRAYER FOR RELIEF

FOR ALL THE REASONS SET FORTH ABOVE, Petitioner prays that this Honorable Court grant this Petition for Writ of Certiorari and, after briefing on the Merits, Petitioner requests this Honorable Court to reverse the decision of the Fifth Circuit Court of Appeals and/or remand the case to the District Court for a New

Trial and/or for Additur and for Injunctive Relief as previously requested from the District Court.

Respectfully submitted,

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By: LANELLE L. MCNAMARA
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Counsel of Record
Attorney for Petitioner Mike Adams

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475 F.3d 688

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-50362

MIKE ADAMS,

Plaintiff-Appellee Cross Appellant,

versus

GROESBECK INDEPENDENT SCHOOL DISTRICT; ET AL.,

Defendants,

GROESBECK INDEPENDENT SCHOOL DISTRICT,

Defendant-Appellant Cross Appellee

Appeals from the United States District Court
for the Western District of Texas

(Filed Jan. 9, 2007)

Before JONES, Chief Judge, and SMITH and STEWART,* Circuit Judges.

EDITH H. JONES, Chief Judge:

Groesbeck Independent School District ("Groesbeck") appeals the district court's denial of its motion for judgment as a matter of law after a jury verdict in favor of Mike Adams, a former girls' athletic coach, on his Title VII retaliation claim. Groesbeck argues that Adams failed to establish retaliation as a matter of law because there was

---

* Judge Stewart concurs in the judgment only.

no "available" position for which he applied. Because no reasonable jury could have found that there was an available position, we REVERSE and RENDER judgment in favor of Groesbeck.

I. BACKGROUND

Mike Adams began working for Groesbeck Independent School District in 1971 as a teacher and coach. In 1998, he and his wife Allison Adams, also a teacher and coach, worked at the Groesbeck middle school. Groesbeck requires that its coaches also teach.

Groesbeck did not renew Adams's contract for the 2000-01 school year because of complaints regarding his coaching abilities. Adams's position at the middle school was not filled, and the nonrenewal of his contract reduced the girls sports coaching staff from three to two. The remaining coaches for the 2000-01 school year were Allison Adams and Allen Grimes.

Before the start of the 2000-01 school year, Adams filed his first suit against Groesbeck in June 1999, alleging violations of Title VII. The parties settled this suit in January 2001. The terms of the settlement did not prohibit Adams from reapplying for employment with Groesbeck.

The 1999-2000 school year began with the same two coaches for girls sports as the previous year, Allison Adams and Grimes. This continued until Groesbeck placed Grimes on administrative leave in October 2001. Groesbeck determined that a long-term substitute teacher would be needed and selected Michael Milnes, who had previously applied to work as a substitute teacher, to cover

Grimes's teaching responsibilities. After Adams learned of Grimes's status in October 2001, he submitted an application for the position of girls middle school coach, even though no coaching position had been advertised. Adams did not apply for a substitute teaching position. While Milnes had been covering Grimes's teaching duties, Milnes had no coaching responsibilities. Allison Adams became the only girls coach. Groesbeck convinced several high school girls coaches to help Allison Adams with the middle school girls coaching responsibilities.

In December 2001, Grimes had resigned and Groesbeck officials met to decide how to address Grimes's teaching and coaching responsibilities for the Spring 2002 semester. The middle school principal, Karon Golden, decided that she would delay hiring a new teacher/coach to replace Grimes until the 2002-03 school year because she wanted extra time to analyze the middle school's needs for the next year. Principal Golden believed that a new teacher was not needed because several of Grimes's classes either had no or very few students assigned. Instead of hiring a new teacher, Principal Golden reassigned the students in Grimes's classes to other teachers. Milnes became an instructional aide to the teachers who took on the additional students. The high school coaches continued assisting Allison Adams with her coaching responsibilities. Principal Golden testified that she made these decisions without knowing that Adams had submitted an application. Groesbeck's superintendent approved Golden's suggestion. Groesbeck did not post a job announcement, review submitted applications, or interview anyone for a teacher/coach position in the Spring 2002 semester.

Allison Adams complained to Athletic Director Richie Coutrer in February 2002 about Groesbeck's handling of

Grimes's coaching responsibilities. She believed Groesbeck should have hired another coach and stated that her husband, Mike Adams, had applied. Allison Adams testified that Coutrer told her that no qualified applicants had applied and that he could not hire Mike Adams because of his previous lawsuit. Coutrer disputed this testimony, however; he recalled telling Allison Adams that the school could not hire Mike Adams because there was no job opening, and he denied stating that Adams could not be hired because of his previous lawsuit.

In April 2003, Adams sued Groesbeck under Title VII for not rehiring him, alleging that the school district had retaliated against him for filing his previous suit. The jury returned a verdict in his favor, and the court entered judgment. Because the district court denied Groesbeck's and Adams's post-judgment motions, both parties have appealed.[1]

II. DISCUSSION

Groesbeck argues that Adams did not apply for an available position, because the middle school had decided not to fill Grimes's spot in the spring semester. Consequently, Adams could not prove that he endured an adverse employment action by Groesbeck.

The district court's denial of Groesbeck's motion for judgment as a matter of law is reviewed *de novo,* applying the same standards as the district court. *Int'l Ins. Co. v.*

---

[1] Groesbeck sought judgment as a matter of law or a new trial on a number of grounds, while Adams moved for an additur and injunctive relief. We need only address the issue that is dispositive for Groesbeck.

RSR Corp., 426 F.3d 281, 296 (5th Cir. 2005). The court must "draw all reasonable inferences and resolve all credibility determinations in the light most favorable to the nonmoving party," *id.*, and the jury verdict must be upheld unless "there is no legally sufficient evidentiary basis for a reasonable jury" to have found for the nonmovant. Fed. R. Civ. P. 50(a)(1); *RSR Corp.*, 426 F.3d at 296-97.

To establish a Title VII retaliation case, Adams was required to prove that he engaged in protected activity; he suffered from an adverse employment action; and there was a causal connection between the activity and the adverse employment decision. *Haynes v. Pennzoil Co.*, 207 F.3d 296, 299 (5th Cir. 2000). Post-trial, the *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817 (1973), framework becomes moot, and the question is whether legally sufficient evidence supported the jury's finding in Adams's favor. *Bryant v. Compass Group USA Inc.*, 413 F.3d 471, 476 (5th Cir. 2005), *cert. denied*, 126 S. Ct. 1027, 163 L.Ed.2d 855 (2006).

Adams's case was built on the contention that Groesbeck failed to hire him as a coach in the Spring 2002 Semester in retaliation for his previous successful Title VII suit against the district. His case breaks down if Groesbeck did not have an opening for a full-time middle school coach at that time. An employer does not discriminate or retaliate illegally if it has no job opening. *See Perez v. Region 20 Educ. Serv. Ctr.*, 307 F.3d 318, 325 (5th Cir. 2002) ("The nonexistence of an available position is a legitimate reason not to promote.") (citing *Int'l Bd. of Teamsters v. United States*, 431 U.S. 324, 358 n.44, 97 S. Ct. 1843, 1866 n.44 (1977)); *Haynes*, 207 F.3d at 300-01 (plaintiff failed to establish a prima facie case of

discrimination because the position he was qualified for was unavailable).

Adams asserts that the jury resolved disputed evidence and found that Groesbeck had an available position for a middle school teacher/coach commencing in October 2001 for which he applied. A careful review of the record shows differently. After Grimes was placed on administrative leave, the district did not post a job announcement, nor did its employees review resumes or interview any candidates to fill his position. Instead, as has been detailed above, Principal Golden and Superintendent Rosas determined that Grimes's teaching duties could be covered by a long-term substitute and selected an appropriate candidate from the substitute list. Adams did not apply to be a substitute teacher. Instead, he submitted an unsolicited application for the full-time position of girls middle school coach.[2]

Adams relies upon his wife's testimony to establish that there was an available position. When Allison complained to Athletic Director Coutrer about the need for another coach, Coutrer allegedly responded that there were no qualified applicants to help her coach the girls teams and that he could not hire her husband because of the previous lawsuit. While Coutrer's statement is the linchpin of the retaliatory motive evidence, the evidence

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[2] The jury's damage award strongly suggests that the jury was erroneously instructed on this point, leading to its confused conclusion that Adams applied for an available position. The jury awarded Adams $5,400 in lost wages, roughly the amount he would have earned as a long-term substitute teacher. The jury apparently believed that the wages paid to Milnes, the long-term substitute teacher, should have been paid to Adams, even though Adams did not apply for this position.

also demonstrated beyond question that Coutrer was not responsible within the district for deciding whether there was an available position at the middle school in the spring semester. *See, e.g., Keelan v. Majesco Software, Inc.*, 407 F.3d 332, 346 (5th Cir. 2005) ("Keelan does not allege and presents no evidence here that the Majesco personnel who made the remarks were involved in or influenced the decision to fire him or that those remarks were made in connection with his discharge."); *see also Scales v. Slater*, 181 F.3d 703, 712 (5th Cir. 1999). Moreover, Allison Adams's desire that her husband be hired to assist with her coaching duties does not establish the existence of an available position.

Adams points to the testimony of Superintendent Glynis Rosas, who admitted that Grimes's position became vacant, and he contends that the reduction of the middle school girls coaching staff from two to one created a vacant position. This misses the distinction between a "vacant" position and an "available" position. Although it was vacant, Grimes's position was not available because Groesbeck officials, for logical reasons having nothing to do with Adams, chose not to hire a new teacher/coach to fill the vacant position during the remainder of the 2001-02 school year. *See Weber v. Am. Express Co.*, 994 F.2d 513, 516 (8th Cir. 1993) (plaintiff failed to establish a prima facie case of discrimination where the employer did not fill the position or seek applicants); *see also Peltier v. United States*, 388 F.3d 984, 989-90 (6th Cir. 2004). Consequently, the jury's finding that there was an available position is not supported by the evidence. *See Perez*, 307 F.3d at 324-25 (position not available when employer chose not to fund it).

III. CONCLUSION

The district court erred in not granting Groesbeck's motion for judgment as a matter of law because Adams failed to establish a prima facie case of retaliation. Adams cannot show that he suffered an adverse employment action because a reasonable jury could not conclude there was an available position. We need not consider Groesbeck's appeal of the district court's denial of its motion for a new trial or the issues raised in Adams's cross appeal. Accordingly, we REVERSE and RENDER judgment in favor of Groesbeck.

REVERSED.

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-50362

D.C. Docket No. 6:03-CV-141

MIKE ADAMS

Plaintiff-Appellee Cross Appellant

v.

GROESBECK INDEPENDENT SCHOOL DISTRICT; ET AL

Defendants

GROESBECK INDEPENDENT SCHOOL DISTRICT

Defendant-Appellant Cross Appellee

Appeals from the United States District Court
for the Western District of Texas, Waco.

Before JONES, Chief Judge, and SMITH and STEWART*, Circuit Judges.

JUDGMENT

(Filed January 9, 2007)

This cause was considered on the record on appeal and was argued by counsel.

It is ordered and adjudged that the judgment of the District Court is reversed and judgment is rendered in favor of the appellant Groesbeck I S D.

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* STEWART, Circuit Judge, concurs in the judgment only:

IT IS FURTHER ORDERED that appellee pay to appellant the costs on appeal to be taxed by the Clerk of this Court.

ISSUED AS MANDATE: MAR 05 2007

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

MIKE ADAMS,	§	
Plaintiff,	§	
	§	
v.	§	**CIVIL ACTION**
GROESBECK INDEPENDENT	§	**NO. W-03-CA-141**
SCHOOL DISTRICT,	§	
GLYNIS ROSAS and	§	
RICHIE COUTRER,	§	
Defendants.	§	

JUDGMENT

(Filed Jun. 30, 2004)

This case came on for trial before the Court and a jury on June 14 through 18, 2004. In accordance with the jury's verdict and the Court's order of May 19, 2004, the Court enters its judgment as follows:

IT IS ORDERED, ADJUDGED AND DECREED that Defendants' Motion for Summary Judgment as to Defendants Glynis Rosas and Richie Coutrer is **GRANTED**.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff have and recover from Defendant Groesbeck Independent School District the sum of $6,400.00.

SIGNED this 30th day of June, 2004.

/s/ Walter S. Smith, Jr.
WALTER S. SMITH, JR.
CHIEF UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

MIKE ADAMS,	§	
Plaintiff,	§	
	§	
v.	§	**CIVIL ACTION**
GROESBECK INDEPENDENT	§	**NO. W-03-CA-141**
SCHOOL DISTRICT,	§	
GLYNIS ROSAS and	§	
RICHIE COUTRER,	§	
Defendants.	§	

AMENDED JUDGMENT

(Filed Sep. 3, 2004)

This case having come to trial before a jury, and the jury having delivered its verdict in open court, the Court now enters its Judgment as follows:

IT IS ORDERED, ADJUDGED AND DECREED that Plaintiff Mike Adams recover from Defendant Groesbeck Independent School District (1) the amount of $5,400.00 in back wages and benefits, plus prejudgment interest on that amount at the rate provided by 28 U.S.C. § 1961(a) beginning on June 1, 2002, and compounded annually to the date of this judgment; (2) compensatory damages in the amount of $1,000.00; and (3) attorney's fees and costs in the amount of $15,750.00.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all monetary relief granted herein shall accrue post judgment interest as computed by 28 U.S.C. § 1961(a) from the date of this Judgment until paid.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Groesbeck Independent School District is hereby ENJOINED from retaliating against Plaintiff Mike Adams, including but not limited to failing to interview Adams for any position at the GISD for which he applies and is qualified, notifying Plaintiff of any decision relating to the hiring of employees for positions for which Adams has applied, and also notifying Adams of the specific reason (2) for any decision made by the GISD not to employ Adams as an employee with the GISD.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff Mike Adams' claims against Defendants Glynis Rosas and Richie Coutrer are **DISMISSED**.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any relief not specifically granted in this Judgment is **DENIED**.

SIGNED this 3rd day of September, 2004.

/s/ Walter S. Smith, Jr.
WALTER S. SMITH, JR.
Chief United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

MIKE ADAMS,	§	
Plaintiff,	§	
	§	
v.	§	**CIVIL ACTION**
GROESBECK INDEPENDENT	§	**NO. W-03-CA-141**
SCHOOL DISTRICT, et al.,	§	
Defendants.	§	

ORDER

(Filed Oct. 29, 2004)

Before the Court is the Defendant Groesbeck Independent School District's Motion to Alter or Amend the Amended Judgment. Plaintiff has not opposed or otherwise responded to this motion. After consideration of the arguments of the Defendant, the Court is of the opinion that Defendant's Motion has merit and should be granted. Accordingly, it is

ORDERED, ADJUDGED AND DECREED that Defendant's Motion to Alter or Amend the Amended Judgment be, and it is hereby **GRANTED.** The injunctive relief awarded in the Court's Amended Judgment [Docket Instrument No. 73] is hereby rescinded and shall have no force or effect.

SIGNED this 28th day of October, 2004.

/s/ Walter S. Smith, Jr.
WALTER S. SMITH, JR.
CHIEF UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

MIKE ADAMS,	§	
Plaintiff,	§	
	§	
v.	§	**CIVIL ACTION**
GROESBECK INDEPENDENT	§	**NO. W-03-CA-141**
SCHOOL DISTRICT, et al.,	§	
Defendants.	§	
	§	

ORDER

(Filed Feb. 3, 2005)

Before the Court is the Plaintiff's Motion to Alter and/or Amend the Amended Judgment Rescinding Injunctive Relief. The Court, having considered the motion, finds that it lacks merit and should be denied. Accordingly, it is

ORDERED, ADJUDGED AND DECREED that the Plaintiff's Motion to Alter and/or Amend the Amended Judgment Rescinding Injunctive Relief is **DENIED.**

SIGNED this 3rd day of February, 2005.

/s/ Walter S. Smith, Jr.
WALTER S. SMITH, JR.
CHIEF UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-50362

MIKE ADAMS

Plaintiff-Appellee Cross Appellant

v.

GROESBECK INDEPENDENT SCHOOL DISTRICT; ET AL

Defendants

GROESBECK INDEPENDENT SCHOOL DISTRICT

Defendant-Appellant Cross Appellee

Appeals from the United States District Court
for the Western District of Texas, Waco

ON PETITION FOR REHEARING

(Filed Feb. 23, 2007)

Before JONES, Chief Judge, and SMITH and STEWART, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing is Denied.

ENTERED FOR THE COURT:

/s/ Edith H. Jones
United States Circuit Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

Mike Adams *Plaintiff*	§	
v.	§	CIVIL ACTION
Groesbeck Independent School District, *Defendant*	§	WA-03-CV-141

PLAINTIFF'S MOTION TO ALTER AND/OR AMEND THE AMENDED JUDGMENT RESCINDING INJUNCTIVE RELIEF

(Filed Nov. 12, 2004)

TO THE HONORABLE WALTER S. SMITH, JR., CHIEF UNITED STATES DISTRICT JUDGE:

Plaintiff, Mike Adams ("Adams") files this Motion to Alter and/or Amend the Amended Judgment Rescinding Injunction Relief and shows:

I. INTRODUCTION

This is a case brought pursuant to the anti-retaliation protection of Title VII. Plaintiff Adams claimed that he was denied re-employment because Defendant Groesbeck Independent School District (GISD) was motivated by retaliation for Adams' having filed a prior lawsuit under Title VII, Title IX, and the First Amendment of the U.S. His claim sought relief for money damages and for injunctive relief and attorney's fees.

The jury returned a verdict finding that Defendant GISD had retaliated against Plaintiff and awarding money damages to Plaintiff. Plaintiff filed a Motion to Amend the Judgment to include injunctive relief that was requested in Plaintiff's Original Petition, and the Court granted this Motion. Defendant, instead of filing a Reply to Plaintiff's Motion including injunctive relief, the Defendant filed a Motion to rescind the injunctive relief. The Court rescinded the injunctive relief, citing the failure of Plaintiff to oppose the Motion as just cause for the rescission.[1]

By the filing of this Motion, Plaintiff reasserts his request for judgment including injunctive relief as set forth below.

II. ARGUMENT AND AUTHORITIES

1. Injunctive Relief was proper in this case.

The Plaintiff met the standards for a permanent injunction in this case, including establishing (1) actual success on the merits, (2) a substantial threat that irreparable injury will result in the absence of the injunction, (3) that the threatened harm to the plaintiff outweighs the

[1] At the time that Defendant filed its Motion to rescind the injunctive relief on the last possible day of September 17, 2004, Plaintiff's counsel was travelling outside of the United States and unavailable by telephone. On September 18, 2007, Plaintiff's counsel was required to return to Texas because of a family health care emergency, which was followed by an investigation involving the State Department of Aging, which ended on October 5, 2004. The family health care emergency continued to October 27th when it ended in the death of counsel's father. Under such circumstances, the failure to file a response to Defendant's Motion did not evidence a lack of opposition to Defendant's Motion but instead evidenced the need for counsel to respond to circumstances beyond counsel's control.

threatened harm to the defendant; and (4) that granting the injunction will not disserve the public interest.

It is undisputed that the Plaintiff established success on the merits in this case. Plaintiff also established a "substantial threat that irreparable injury would result in the absence of the injunction." The evidence supporting this threat is as follows:

(1) Plaintiff Mike Adams (and his wife, Allison) filed a lawsuit in 1999 against the GISD, which suit included claims of discrimination and retaliation, under Title VII, Title IX, and the First Amendment of the United States Constitution.

(2) After dispositive Motions had been adjudicated by the Court in the prior lawsuit and the case was set for trial on the merits, the GISD entered into a written Mutual Release of Claims, which, by its language released all claims that the GISD might have asserted against Plaintiff in the prior lawsuit and all claims that were laid to rest by the GISD`s execution of the Mutual Release could not be retried in the future.

(3) Nonetheless, throughout the trial of this case, the GISD consistently re-asserted the same claims that it had asserted in the prior lawsuit that were foreclosed by the settlement and release executed in 2001 and the GISD introduced and persistently attempted to introduce evidence of the claims that had been asserted in the prior lawsuit.

(4) It is undisputed that Plaintiff was not prohibited from seeking re-employment with the GISD and was clearly eligible for rehire

by the district. In fact, Plaintiff submitted an application for employment with the GISD immediately after the 2001 settlement was finalized.

(5) In October of 2001, Plaintiff learned that a teacher/girls coach had been placed on administrative leave and subsequently resigned. Plaintiff was qualified for employment in the position that had been vacated. Plaintiff submitted another application in an attempt to insure that the GISD would consider his application and qualification for this job.

(6) The GISD never communicated with Plaintiff. Plaintiff was not interviewed for the position, and the duties and responsibilities of the position were assigned to an individual who was not qualified to teach or coach.

(7) The failure of the GISD to fill the teacher/coach position with a qualified applicant placed additional responsibilities on Plaintiff's wife, who had been a co-Plaintiff in the first lawsuit, and Plaintiff's wife was not compensated for the extra duties that she was required to assume.

(8) When Plaintiff's wife complained to the Athletic Director about his not having hired a qualified teach/coach for the vacated position, the Athletic Director told Plaintiff's wife that he could not hire Plaintiff "because of the lawsuit."

(9) In the course of the trial, it became evident that GISD administrators had talked to many of the employees of the District regarding their experiences with Plaintiff prior to the first lawsuit. In fact, GISD administrators,

one of which is now the Assistant Superintendent, *i.e. Karen Golden, testified that* she talked to one or two coaches who said they would quit if Plaintiff was re-hired by the District.

(10) Following the conclusion of the trial in this case, Plaintiff filed another application for employment with the GISD and, despite the fact that Plaintiff learned that two positions that were open had been filled, Plaintiff received no communication from the GISD as to whether or not his applications were considered. See Affidavit of Plaintiff attached in Exhibit "A" and incorporated by reference herein.

Given the fact that this was the second case against the GISD involving "retaliation" claims by Plaintiff against the GISD, and given the evidence set forth above, this Court may easily conclude that a retaliatory animus still persists in the administration of the GISD. ***Professional Association of College Educators, TSTA/NEA, et al. v. El Paso County Community College District***, 730 F 2d 258, 272-274 (5th Cir. 1984, *cert denied* 469 U.S. 881, 105 S.Ct. 248, 83 L.Ed.2d 186, U.S. Tex. October 9, 1984).

Absent a mandatory injunction, Plaintiff will be unable to learn whether or not his applications were even considered by the GISD, and, if so, what reason(s) were given for the failure to interview and/or hire Plaintiff, and what were the qualifications, if any, of the individuals, who were hired by the District, for positions for which Plaintiff applied and was qualified. Although records of the District may be "open records" in Texas, Plaintiff will likely be required to pursue administrative remedies in order to obtain information that the District has refused to

provide in the past. For all of these reasons, the Court should find that (1) there is a substantial threat that irreparable injury will result to Plaintiff in the absence of the mandatory injunction requested by Plaintiff, and (2) the threatened harm to the plaintiff outweighs the threatened harm to the defendant, and (3) that granting the injunction will not disserve the public interest.

2. The Injunction proposed is not vague or overly broad.

The injunctive relief originally proposed by Plaintiff, which is amended in the Proposed Order submitted with this Motion, was not vague or overly broad. Although Defendant proposes a myriad of hypothetical reasons as to why the injunction is "overly broad," this court is not required to attempt to catalog every conceivable means by which an employer might retaliate against an employee. ***Professional Association of College Educators, TSTA/NEA, et al. v. El Paso County Community College District,*** cited supra, at p. 272. The rules do not require "unwieldy" specificity, but only that the injunction "be framed so that those enjoined will know what conduct the court has prohibited." *Meyer v. Brown & Root Construction Co.,* 661 F.2d 369, 373 (5th Cir. 1981). The standards requiring specificity in injunctions are fully met in the Proposed Order attached.

III. CONCLUSION

Wherefore, Plaintiff prays that this Honorable Court enter the Amended Proposed Judgment submitted herewith by Plaintiff, reinstating the Injunctive Relief, and

preserving the other relief included in the prior Order of this Court on September 3, 2004.

Respectfully submitted,

LaNELLE L. McNAMARA, P.C.

By: /s/ LaNelle L. McNamara
LaNelle L. McNamara
State Bar No. 13817300

1921 Austin Avenue
Waco, Texas 76701
(254) 754-5458
(254) 754-5451

ATTORNEY FOR
PLAINTIFF MIKE ADAMS

CERTIFICATE OF CONFERENCE

I, LaNelle L. McNamara, hereby certify that pursuant to Western District Local Rule CV-7(h), I telephoned opposing counsel on November 12, 2004, to confer about this motion. I was informed by Bridget R. Robinson, opposing counsel, that she will oppose the granting of this Motion.

/s/ LaNelle L. McNamara
LaNelle L. McNamara

CERTIFICATE OF SERVICE

I certify that a copy of the above and foregoing document was served on this the 12th day of November, 2004, to the following person in the following manner:

Bridget Robinson
VIA CMRRR #7004 0750 0000 6447 6189
WALSH, ANDERSON BROWN,
SCHULZE & ALDRIDGE, P.C.
P.O. Box 2156
Austin, Texas 78768

/s/ LaNelle L. McNamara
LaNelle L. McNamara

EXHIBIT "A"

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

MIKE ADAMS,	§	
Plaintiff	§	
	§	
vs.	§	**CIVIL ACTION**
GROESBECK INDEPENDENT	§	
SCHOOL DISTRICT, MS.	§	**W-03-CA-141**
GLYNIS ROSAS, and MR.	§	
RICHIE COUTRER	§	
Defendants	§	

EXHIBIT "A" IN SUPPORT OF PLAINTIFF'S MOTION TO ALTER/AMEND JUDGMENT RESCINDING INJUNCTIVE RELIEF

AFFIDAVIT OF MIKE ADAMS

THE STATE OF TEXAS §

COUNTY OF McLENNAN §

BEFORE ME, the undersigned authority, on this day personally appeared MIKE ADAMS, who, upon oath, after first being duly sworn, stated:

1. "My name is Mike Adams. I am the Plaintiff in the above-entitled and numbered cause pending before this Court. I am over the age of twenty-one years. I am competent to make this Affidavit and have personal knowledge of all the facts stated herein, which are true and correct.

2. "I was previously a Plaintiff in Civil Action W-99-CA-194 in the United States District Court for the Western District of Texas, Waco Division, styled "*Mike Adams and Allison Adams v.* Groesbeck *Independent School District, Mr. Charles Little, Ms. Aleece McBay, Ms. Glynis Rosas.*" My wife, Allison Adams, was also a Plaintiff in that case.

3. "The lawsuit involved several causes of action, including violations of Title VII, Title IX, and of the First Amendment of the United States Constitution. Shortly before the case was scheduled to proceed to trial, the parties went to mediation and thereafter entered into a confidential settlement agreement, that included a mutual release of all claims and defenses.

4. "In addition to the Mutual Release of All Claims, I was rehired and then resigned from my position at the Groesbeck Independent School District, and I was not ineligible to be rehired with the District in the future.

5. "Further, in addition to the Mutual Release of All Claims, Dr. Glynis Rosas, the Superintendent of the Groesbeck ISD, agreed to write a Letter of Recommendation that she would furnish to school districts with whom I sought to be employed.

6. "During the trial of this case, I had an employment application pending with the GISD. After the jury entered its verdict in this case, I filed another application for employment with the GISD to insure that my application was continuously on file with the District.

7. "During the jury trial, I learned that the Board of Trustees of the District held an emergency meeting during the week prior to trial, and the purpose of the meeting was to hire the wife of the new Superintendent to teach in the Middle School. At the time that the emergency meeting occurred, the District did not have an opening in the position that was filled by the hiring of the wife of the Superintendent. After the trial of my case ended, the position that was filled by the emergency hiring of the wife of the Superintendent became open when the middle school teacher who had contracted for this position in the past actually submitted her resignation to the GISD Board. I had a current application on file with the GISD at the time that the superintendent's wife was hired. The GISD's premature and so-called "emergency" hiring of an employee for a position that was not open at the time of the hiring is unorthodox, if not unlawful. My application for employment was apparently not considered in this process.

8. "Shortly after my trial ended, a teacher/girls coach position in the middle school opened up. My application was on file at the time. I was not interviewed for the position. The position was filled by the wife of the High School Principal, who had been teaching in the elementary school the prior year. This person had no prior coaching experience or training.

9. I have had no communication from the GISD from the time that 1 resigned in 2001 pursuant to the settlement agreement referenced above, even though my application has been continuously on file with the District.

Further Affiant sayeth not.

/s/ Mike Adams
Mike Adams

SUBSCRIBED AND SWORN TO by the said Mike Adams on the 12th day of November, 2004.

/s/ Patty A. Mattlage
Notary Public,
State of Texas

[SEAL] Patty A. Mattlage
My Commission Expires
August 27 2008

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

MIKE ADAMS, *Plaintiff*	§	
v.	§	CIVIL ACTION
GROESBECK INDEPENDENT SCHOOL DISTRICT, ET AL *Defendant*	§	NO. W-03-CA-141

PROPOSED ORDER AMENDING ORDER RESCINDING INJUNCTIVE RELIEF

Before the Court is the Plaintiff Mike Adams Motion to Alter and/or Amend the Amended Judgment Rescinding Injunctive Relief. After consideration of the arguments of the Plaintiff, the Court is of the opinion that Defendant's Motion has merit and should be granted.

The jury returned a verdict finding that Defendant GISD had retaliated against Plaintiff and awarding money damages to Plaintiff.

The Court finds that the Plaintiff met the standards for a permanent injunction in this case, including establishing (1) actual success on the merits, (2) a substantial threat that irreparable injury will result in the absence of the injunction, (3) that the threatened harm to the plaintiff outweighs the threatened harm to the defendant; and (4) that granting the injunction will not disserve the public interest.

It is undisputed that the Plaintiff established success on the merits in this case. Plaintiff also established a "substantial threat that irreparable injury would result in

the absence of the injunction." The evidence supporting this threat is as follows:

(1) Plaintiff Mike Adams (and his wife, Allison) filed a lawsuit in 1999 against the GISD, which suit included claims of discrimination and **retaliation**, under Title VII, Title IX, and the First Amendment of the United States Constitution.

(2) After dispositive Motions had been adjudicated by the Court in the prior lawsuit and the case was set for trial on the merits, the GISD entered into a written Mutual Release of Claims, which, by its language released all claims that the GISD might have asserted against Plaintiff in the prior lawsuit and all claims that were laid to rest by the GISD's execution of the Mutual Release could not be retried in the future.

(3) Nonetheless, throughout the trial of this case, the GISD consistently re-asserted the same claims that it had asserted in the prior lawsuit that were foreclosed by the settlement and release executed in 2001 and the GISD introduced and persistently attempted to introduce evidence of the claims that had been asserted in the prior lawsuit.

(4) It is undisputed that Plaintiff was not prohibited from seeking re-employment with the GISD and was clearly eligible for rehire by the district. In fact, Plaintiff submitted an application for employment with the GISD immediately after the 2001 settlement was finalized.

(5) In October of 2001, Plaintiff learned that a teacher/girls coach had been placed on administrative leave and subsequently resigned. Plaintiff was qualified for employment in the position that had been vacated. Plaintiff submitted another application in an attempt to insure that the GISD would consider his application and qualification for this job.

(6) The GISD never communicated with Plaintiff. Plaintiff was not interviewed for the position, and the duties and responsibilities of the position were assigned to an individual who was not qualified to teach or coach.

(7) The failure of the GISD to fill the teacher/coach position with a qualified applicant placed additional responsibilities on Plaintiff's wife, who was also a Plaintiff in the first lawsuit, and Plaintiff's wife was not compensated for the extra duties that she was required to assume.

(8) When Plaintiff's wife complained to the Athletic Director about his not having hired a qualified teach/coach for the vacated position, the Athletic Director told Plaintiff's wife that he could not hire Plaintiff "because of the lawsuit."

(9) In the course of the trial, it became evident that GISD administrators had talked to many of the employees of the District regarding their experiences with Plaintiff prior to the first lawsuit. In fact, GISD administrators, one of which is now the Assistant Superintendent, i.e. Karen Golden, testified that she talked to one or two

coaches who said they would quit if Plaintiff was re-hired by the District.

(10) Following the conclusion of the trial in this case, Plaintiff filed another application for employment with the GISD and, despite the fact that Plaintiff learned that two positions that were open had been filled, Plaintiff received no communication from the GISD as to whether or not his applications were considered. See Affidavit of Plaintiff attached in Exhibit "A" to Plaintiff's Motion to Alter And/or Amend the Amended Judgment Rescinding Injunctive Relief.

Given the fact that this was the second lawsuit against the GISD involving "retaliation" claims by Plaintiff, and given the evidence set forth above, this Court concludes that the officers, agents, employees, representatives and attorneys for the GISD have maintained a retaliatory animus against Plaintiff, that the retaliation was continuing through the trial, and, in all reasonable probability, the GISD will continue to retaliate against Plaintiff in the future. ***Professional Association of College Educators, TSTA/NEA, et al. v. El Paso County Community College District,*** 730 F.2d 258, 272-274 (5th Cir.1984, *cert. denied* 469 U.S. 881, 105 S.Ct. 248, 83 L.Ed.2d 186, U.S. Tex. October 9, 1984).

Absent a mandatory injunction, Plaintiff will be unable to learn whether or not his applications were even considered by the GISD, and, if so, what reason(s) were given for the failure to interview and/or hire Plaintiff, and what were the qualifications, if any, of the individuals, who were hired by the District, for positions for which Plaintiff applied and was qualified. Although records of the District may be "open records" in Texas, Plaintiff will

likely be required to pursue administrative remedies in order to obtain information that the District has refused to provide in the past. For all of these reasons, the Court finds that (1) there is a substantial threat that irreparable injury will result to Plaintiff in the absence of the mandatory injunction requested by Plaintiff, and (2) the threatened harm to the plaintiff outweighs the threatened harm to the defendant, and (3) that granting the injunction will not disserve the public interest.

The Court also finds that the injunctive relief proposed by Plaintiff, which is incorporated into the Second Amended Judgment entered on even date with this Order, is not vague or overly broad. This court is not required to attempt to catalog every conceivable means by which an employer might retaliate against an employee. ***Professional Association of College Educators, TSTA/NEA, et al. v. El Paso County Community College District,*** cited supra, at p. 272. The rules do not require "unwieldy" specificity, but only that the injunction "be framed so that those enjoined will know what conduct the court has prohibited." ***Meyer v. Brown & Root Construction Co.,*** 661 F.2d 369, 373 (5th Cir. 1981). The standards requiring specificity in injunctions are fully met in this court's Second Amended Judgment.

SIGNED on this ___ day of _____, 2004.

/s/ _____
WALTER S. SMITH, JR.
CHIEF UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

MIKE ADAMS,	§	
Plaintiff,	§	
	§	
v.	§	**Civil No. W-03-CA-141**
	§	
GROESBECK INDE-	§	(Filed Jun. 17, 2004)
PENDENT SCHOOL	§	
DISTRICT,	§	
Defendant.	§	

SPECIAL INTERROGATORIES

Answer all questions by a preponderance of the evidence.

SPECIAL INTERROGATORY NUMBER ONE

Did the Groesbeck Independent School District in January of 2002 fail to hire Mike Adams for an available position because he had previously filed a lawsuit complaining about unlawful discrimination?

Answer "Yes" or "No."

Answer: Yes

If you have answered "Yes" as to Special Interrogatory Number One, then proceed to Special Interrogatory Number Two.

If you have answered "No" as to Special Interrogatory Number one, do not answer any further Special Interrogatories. Sign and date the verdict form and return it to the Court.

SPECIAL INTERROGATORY NUMBER TWO

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate the Plaintiff, Mike Adams for lost wages and employment benefits in the past which were proximately caused by the Defendant's actions?

Answer in dollars and cents or "None."

Answer: $ 5,400.00

Proceed to Special Interrogatory Number Three.

SPECIAL INTERROGATORY NUMBER THREE

What sum of money, if any, if paid now in cash, should be awarded to Mike Adams as compensatory damages for pecuniary losses (excluding wages and employment benefits), including suffering and mental anguish in the past and in the future which are a proximate result of the Defendant's actions?

Answer in dollars and cents or "None."

Answer: $ 1,000

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

MIKE ADAMS,	§	
Plaintiff,	§	
	§	
v.	§	
	§	**Civil No. W-03-CA-141**
GROESBECK INDEPENDENT SCHOOL DISTRICT,	§	
	§	
	§	
Defendant.	§	

VERDICT FORM

We, the jury, have unanimously agreed to the answers to the attached special interrogatories and hereby return such answers in open court, and under the instructions of the court, as our verdict in this case.

June 17, 2004 /s/ Kenneth [Illegible]
DATE **PRESIDING JUROR**

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

MIKE ADAMS,	§	
	§	CIVIL ACTION
vs.	§	W-03-CA-141
	§	(Filed Jun. 17, 2004)
GROESBECK INDEPENDENT SCHOOL DISTRICT,	§	
	§	

JURY NOTE NUMBER 1

In the court's charge to the jury, what does "an available position" mean? Are we allowed to infer there is/was an available position? Or, are we supposed to decide that issue in order to proceed to the rest of the charge?

/s/ K. [Illegible]
PRESIDING JUROR

June 17 9:35 A.M.
DATE and TIME

* * *

COURT'S RESPONSE:

Ladies and Gentlemen:

For you to find that Groesbeck I.S.D. failed to hire Plaintiff you must find that there was an available position. "An available position" has no meaning other than its ordinary meaning.

Regarding your ability to infer that facts exist, please refer to the first paragraph of page four of the Court's instructions.

/s/ Walter S. Smith, Jr.
WALTER S. SMITH, JR.
UNITED STATES
DISTRICT JUDGE

10:45 am. 6/17/04

JURY NOTE NUMBER 2

In the testimony given by S. Retz, did the court tell the jury to strike/ignore *any and all* of S. Retz's reference to the phone conversation Allison Adams had with Richey Coutrer; or did did Judge Smith tell the jury to ignore "the

part" of that testimony where S. Retz was going to "repeat" Allison's Statement to Sandy Retz regarding R. Coutrer comments?

/s/ K. [Illegible]
PRESIDING JUROR

June 17 9:35 AM
DATE and TIME

* * *

COURT'S RESPONSE:

Ladies and Gentlemen:

Any answer to a question of Ms. Retz regarding the content of a telephone conversation would have been inadmissable hearsay. Therefore, you were instructed to disregard such.

/s/ Walter S. Smith, Jr.
WALTER S. SMITH, JR.
UNITED STATES
DISTRICT JUDGE

10:45 am 6/17/04

JURY NOTE NUMBER 3

The jury prefers that lunch be brought in

/s/ K. [Illegible]
PRESIDING JUROR

June 17, 2004 11:00
DATE and TIME

* * *

COURT'S RESPONSE:

/s/ _____
WALTER S. SMITH, JR.
UNITED STATES
DISTRICT JUDGE

JURY NOTE NUMBER 4

*In Reference To Page 5 – Juror Instructions – Title VII makes it unlawful for employers to take adverse employment actions against an "employee" because of discrimination – does not list "Applicants" – Are *Job Applicants* also allowed to claim discrimination under Title VII?

/s/ K. [Illegible]
PRESIDING JUROR

June 17 11:28 A
DATE and TIME

* * *

COURT'S RESPONSE:

Yes

/s/ Walter S. Smith, Jr.
WALTER S. SMITH, JR.
UNITED STATES
DISTRICT JUDGE

6/17/04 11:45

JURY NOTE NUMBER 5

We need an outside break

Donovan Raifs [Illegible]

[Illegible]

/s/ K. [Illegible]
PRESIDING JUROR

June 17, 2004 – 11:30
DATE and TIME

* * *

COURT'S RESPONSE:

/s/
WALTER S. SMITH, JR.
UNITED STATES
DISTRICT JUDGE

JURY NOTE NUMBER 6

Decision has been reached

/s/ K. [Illegible]
PRESIDING JUROR

June 17, 2004 1:40 p
DATE and TIME

* * *

COURT'S RESPONSE:

/s/ _____
WALTER S. SMITH, JR.
UNITED STATES
DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

MIKE ADAMS,	§	
Plaintiff	§	
	§	
v.	§	**Civil No.**
	§	**W-03-CA-141**
GROESBECK INDEPENDENT	§	
SCHOOL DISTRICT,	§	
Defendant.	§	

COURTS INSTRUCTIONS TO THE JURY

(Filed Jun. 16, 2004)

Members of the Jury:

You have heard the evidence in this case. I will now instruct you on the law that you must apply. It is your duty to follow the law as I give it to you. On the other hand, you the jury are the judges of the facts. Do not consider any statement that I have made in the course of trial or make in these instructions as an indication that I have any opinion about the facts of this case.

After I instruct you on the law, the attorneys will have an opportunity to make their closing arguments. Statements and arguments of the attorneys are not evidence and are not instructions on the law. They are intended only to assist the jury in understanding the evidence and the parties' contentions.

Answer each question from the facts as you find them. Do not decide who you think should win and then answer the questions accordingly. Your answers and your verdict must be unanimous.

You must answer all questions from a preponderance of the evidence. By this is meant the greater weight and degree of credible evidence before you. In other words, a preponderance of the evidence simply means the amount of evidence that persuades you that a claim is more likely so than not so. In determining whether any fact has been proved by a preponderance of the evidence in the case, you may, unless otherwise instructed, consider the testimony of all witnesses, regardless of who may have called them, and all exhibits received in evidence, regardless of who may have produced them.

There are two types of evidence that you may consider in properly finding the truth as to the facts in the case. One is direct evidence – such as testimony of an eyewitness. The other is indirect or circumstantial evidence – the proof of a chain of circumstances that indicates the existence or nonexistence of certain other facts. As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that you find the facts from a preponderance of all the evidence, both direct and circumstantial.

While you should consider only the evidence in this case, you are nonetheless permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions that reason and common sense lead you to draw from the facts that have been established by the evidence in the case.

The testimony of a single witness may be sufficient to prove any fact, even if a greater number of witnesses may

have testified to the contrary, if after considering all the other evidence you believe that single witness.

In determining the weight to give to the testimony of a witness, you should ask yourself whether there was evidence tending to prove that the witness testified falsely concerning some important fact, or whether there was evidence that at some other time the witness said or did something, or failed to say or do something, that was different from the testimony the witness gave before you during the trial.

You should keep in mind, of course, that a simple mistake by a witness does not necessarily mean that the witness was not telling the truth as he or she remembers it, because people may forget some things or remember other things inaccurately. So, if a witness has made a misstatement, you need to consider whether that misstatement was an intentional falsehood or simply an innocent lapse of memory; and the significance of that may depend on whether it had to do with an important fact or with only an unimportant detail.

Do not let bias, prejudice or sympathy play any part in your deliberations. A school district and all other persons are equal before the law and must be treated as equals in a court of justice.

Mike Adams asserts that the Groesbeck Independent School District did not select him for employment in a position for which he was best qualified in violation of the anti-retaliation provisions of Title VII. Title VII makes it unlawful for an employer to take any adverse employment action against an employee because the employee has complained about discrimination prohibited by Title VII.

The Groesbeck Independent School District alternately contends (1) that the position for which Mike Adams applied was not open for applications; or (2) that there were legitimate reasons for not selecting Mike Adams for any position.

Plaintiff must prove his retaliation claim by a preponderance of the evidence, either directly or indirectly. Direct evidence would include oral or written statements showing a retaliatory motivation for the Defendant's adverse employment decision regarding the Plaintiff.

In order to recover on such a claim, the Plaintiff must prove by a preponderance of the direct evidence the following: (1) he engaged in an activity protected by Title VII; (2) he suffered an adverse employment action; and (3) the adverse employment action would not have occurred but for the Plaintiff engaging in protected activity.

Direct evidence of discrimination is that which shows that the employer in question actually relied on Plaintiffs prior Title VII lawsuit in making its decision.

A Plaintiff may also prove a case without direct evidence of retaliation by means of indirect evidence if that evidence is sufficient to prove by a preponderance of the evidence that the Defendant's decision would not have occurred but for the Plaintiff's prior lawsuit.

In order to establish a case of retaliation based on indirect evidence, the Plaintiff must first establish what is called a *prima facie* case. More specifically, Plaintiff must prove by indirect evidence the following elements by a preponderance of the evidence:

1) The Plaintiff engaged in an activity protected by Title VII;

2) The Plaintiff suffered from an adverse employment action; and

3) A causal link existed between the adverse employment action and the Plaintiff's protected activity.

If the Plaintiff has proven facts establishing each element of his *prima facie* case then he has created a rebuttable presumption that the Defendant unlawfully retaliated against him.

Once the Plaintiff has created a rebuttable presumption that the Defendant unlawfully retaliated against him, you must consider whether the Defendant has presented any legitimate non-retaliatory reasons for its decision. The Defendant's burden is simply to state a legitimate non-retaliatory reason for its decision. The Defendant does not have to convince you that the reason is good.

If the Defendant satisfied its burden by presenting evidence tending to show a non-retaliatory reason for its decision, the Plaintiff then must persuade you, by a preponderance of the evidence, that the adverse employment action would not have occurred but for the Plaintiff engaging in a protected activity. The Plaintiff may do this by proving by a preponderance of the evidence that the reasons stated by the Defendant for not hiring him are only a pretext or cover-up for what, in truth, was a retaliatory purpose.

Plaintiff must prove that one or more of the individuals involved in the decision-making process knew that the Plaintiff had previously complained about discrimination against him in violation of Title VII. If Plaintiff cannot prove that the ultimate decisionmaker had knowledge of Plaintiffs prior Title VII complaint, Plaintiff may

nonetheless meet his burden to prove that retaliation was the reason for the adverse employment action because other persons, who did have knowledge of Plaintiffs prior Title VII complaint, had influence or leverage over the ultimate decisionmaker and therefore the decision was influenced by retaliatory motives of others.

If you find that Plaintiff has proven his claim against Defendant by a preponderance of the evidence, you must determine the damages to which Plaintiff is entitled. You should not interpret the fact that I have given instructions about Plaintiff's damages as an indication in any way that I believe that recovery is appropriate or that there is sufficient evidence to support Plaintiff's claim of retaliation. It is your task first to decide whether Defendant is liable. I am instructing you on damages only so that you will have guidance in the event you decide that Defendant is liable and that Plaintiff is entitled to recover money from Defendant.

You may award compensatory damages only for injuries that Plaintiff proves were proximately caused by Defendant's allegedly wrongful conduct. The damages that you award must be fair compensation – no more and no less. Damages are not allowed as a punishment and cannot be imposed or increased to penalize the Defendant. You may award damages for any lost pay, suffering or mental anguish that Plaintiff experienced as a consequence of Defendant's allegedly unlawful act. No evidence of the monetary value of such intangible things as suffering and mental anguish has been, or need be, introduced into evidence. There is no exact standard for fixing the compensation to be awarded for these elements of damage. Any award you make should be fair in light of the evidence presented at the trial.

In determining the amount of any damages that you decide to award, you should be guided by common sense. You must use sound judgment in fixing an award of damages, drawing reasonable inferences from the facts in evidence. You may not award damages based on sympathy, speculation, or guess work. On the other hand, the law does not require the Plaintiff prove the amount of his losses with mathematical precision, but only with as much definiteness and accuracy as circumstances permit. In making any decision regarding damages, take into consideration the severity of harm or lack thereof from the evidence submitted. The evidence should be specific and not based upon summary or unsupported conclusions.

Any notes that you have taken during this trial are only aids to memory. If your memory should differ from your notes, then you should rely on your memory and not on the notes. The notes are not evidence. A juror who has not taken notes should rely on his or her independent recollection of the evidence and should not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollection or impression of each juror about the testimony.

When you retire to the jury room to deliberate on your verdict, you may take this charge with you as well as exhibits which the Court has admitted into evidence. Select your presiding juror and conduct your deliberations. If you recess during your deliberations, follow all of the instructions that the Court has given you about your conduct during the trial. After you have reached your unanimous verdict, your presiding juror is to fill in on the form your answers to the questions. Do not reveal your answers until such time as you are discharged, unless otherwise directed by me. You must never disclose to

anyone, not even to me, your numerical division on any question.

If you want to communicate with me at any time, please give a written message or question to the court security officer who will bring it to me. I will then respond as promptly as possible either in writing or by having you brought into the courtroom so that I can address you orally. I will always first disclose to the attorneys your question and my response before I answer your question.

After you have reached a verdict, you are not required to talk with anyone about the case unless the Court orders otherwise.

TRIAL EXHIBITS 1-4

PLAINTIFF'S EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

MIKE ADAMS & ALLISON ADAMS, *Plaintiffs* vs. GROESBECK INDEPENDENT SCHOOL DISTRICT, MR. CHARLES LITTLE, MS. ALEECE McBAY, and MS. GLYNIS ROSAS, *Defendants*	§ § § § § § § § § §	CIVIL ACTION W-99-CA-184

MUTUAL RELEASE OF ALL CLAIMS

WHEREAS, Mike and Allison Adams, collectively "Plaintiffs" have asserted claims against Groesbeck Independent School District, acting by and through its agents, servants, or employees ("Groesbeck ISD"), Mr. Charles D. Little ("Little"), Ms. Aleece McBay ("McBay"), and Dr. Glynis Rosas ("Rosas"), collectively "Defendants", arising out of or in connection with the Adams' employment by Groesbeck ISD; and

WHEREAS, Allison Adams has alleged that Defendants discriminated against her on the basis of her sex in violation of Title VII and retaliated against her because she participated in opposing policies and practices that violated Title IX, and that the Defendants' discrimination and retaliation resulted in personal injury and damage to her personal reputation including but not limited to

embarrassment, mental anguish, and pain and suffering; and

WHEREAS, Mike Adams has also alleged that Defendants retaliated against him because he opposed policies and practices that violated Title IX and because he exercised his rights under the East Amendment of the United States Constitution, and that Defendants' actions resulted in personal injury and damage to his personal reputation including but not limited to embarrassment, mental anguish, and pain and suffering; and

WHEREAS, the Adams have also alleged that the Defendants' acts resulted in lost wages or other economic harm; and

WHEREAS, Groesbeck ISD, Little, McBay, and Rosas deny liability or responsibility in connection with any and all such claims; and

WHEREAS, the Adams and Groesbeck ISD, Little, McBay, and Rosas desire to avoid further controversy, trouble and expense in connection with such claims and desire for this matter to be fully compromised, settled and resolved;

NOW THEREFORE, the Adams and Groesbeck ISD, Little, McBay, and Rosas hereby agree as set forth below:

FOR AND IN CONSIDERATION OF (1) the payment from Groesbeck ISD, Little, McBay, and Rosas to the Adams of One Hundred Seventy Thousand Dollars ($170,000) on or before January 31, 2001, as compensation for damages alleged to have been suffered by the Adams, including but not limited to pain and suffering, mental anguish, humiliation, embarrassment, and loss of enjoyment of life in the past and in the future; and (2) the

agreement of the Groesbeck ISD to rehire Mike Adams for one day without additional consideration and permit him to resign from his position with the Groesbeck ISD; and (3) a letter of recommendation from the GISD; and (4) the release by or on behalf of Groesbeck ISD, Little, McBay, and Rosas, and the indemnity agreement of Groesbeck ISD contained herein, the Adams, hereinafter called "Claimants", do hereby release and discharge the Groesbeck ISD, and its present and former trustees, agents, servants, and employees, attorneys, and insurance companies, acting in their official capacity in the course or scope of their employment or service to the Groesbeck ISD, and further including Little, McBay, and Rosas, acting in the individual capacity, hereinafter called "the Released Parties", of and from any and all liability, claims, causes of action, complaints, or grievances that could have been asserted by Claimants for any matters occurring prior to January 15, 2001.

It is further understood and agreed that, unless otherwise expressly stated herein, the claims released by Claimants hereunder do not include any claims against a Released Party which may arise by reason of actions of a Released Party in the future, including but not limited to actions occurring after January 15, 2001, including but not limited to claims involving republication or redistribution by a Released Party of statements or writings made prior to January 15, 2001.

For said consideration, Claimants agree and warrant: that no promise or agreement not herein expressed has been made; that this release is not executed in reliance on any other statement or representation made by the Released Parties, or by any one of the Released Parties, or by any representative or agent of the Released Parties; that

the above-mentioned consideration is accepted in full compromise, settlement, accord and satisfaction of all claims and demands that could have been asserted by Claimants, and that this agreement is contractual and not merely recital; and that claim for all bills, costs, medical expenses, attorney's fees, income taxes, social security taxes, and other taxes, if any are due and owing, and expenses of every kind are included herein, and Claimant hereby agrees to see that such bills, expenses, fees, taxes, if any, and costs, are paid.

In consideration of Claimants' release of claims set forth above and the agreements of Claimants contained herein, the Groesbeck ISD, Little, McBay, and Rosas fully and completely release Claimants of and from any and all claims of any type existing prior to or as of January 15, 2001, relating to, or connected with all occurrences, events occurring prior to January 15, 2001, and including all claims which could have been asserted by the Groesbeck ISD, Little, McBay, and Rosas.

It is further agreed and understood that this agreement shall not be construed or used as an admission of liability on the part of any party released, by whom liability is expressly denied, and that the sum herein paid, and the mutual release of claims provided for herein, are by way of compromise and settlement of a disputed matter and controversy, and are made in order to avoid the trouble and expense of further investigation or litigation.

Claimants and the Released Parties hereby agree to have their attorneys sign the Joint Motion for Dismissal, a copy of which is attached and marked "Exhibit A", and to take any and all other action necessary to cause all Claimants' suits to be dismissed.

Claimants and Groesbeck ISD agree and covenant that both they and any persons to whom they disclose the terms and conditions of this Mutual Release of All Claims, will keep said terms and conditions confidential, subject only the Texas Open Record Act and will not voluntarily disclose the same to any third party, except that the parties and their attorneys may report the settlement as required by law, may respond to questions propounded under court order or subpoena, and may disclose the settlement to their auditors, accountants and insurance representatives.

Claimants Mike Adams and Allison Adams also state and represent that they have read this Mutual Release of All Claims in full detail; that the same has been explained to them in full detail by their duly licensed attorney, LaNelle L. McNamara; that they completely understand the same in full detail; that they are both competent to enter into this Agreement and Release and are under no legal disability; that neither of them are now undergoing any psychiatric or psychological treatment which would impair their ability to understand or consent to this Release; that no guardianship exists at this time for either of them; that they have not assigned all or any part of their alleged causes of action to any person or entity; that they understand that the settlement evidenced hereby is the final settlement of all claims between Claimants and the Released Parties; and that they have voluntarily entered into the settlement evidenced hereby of their own free will in consideration of the acts, promises and payment of monies set forth herein.

Mr. Charles Little, Ms. Aleece McBay, and Dr. Glynis Rosas, in their individual and official capacities, also state and represent that they have read this Mutual Release of

All Claims in full detail; that the same has been explained to them in full detail by the duly-licensed attorneys that represent the Released Parties, Roger Hepworth and/or Andrew Chance; that they completely understand the same in full detail; that they are competent and authorized to enter into this Agreement and Release and are under no legal disability; that they are not now undergoing any psychiatric or psychological treatment which would impair their ability to understand or consent to this Release; that no guardianship exists at this time for them; that they have not assigned all or any part of the causes of action that could have been alleged by them to any person or entity; that they understand that the settlement evidenced hereby is the final settlement of all claims between Claimants and the Released Parties; and that they have voluntarily entered into the settlement evidenced hereby of their own free will in consideration of the acts and promises set forth herein.

Mr. Charles Little, in his official capacity as President of the Groesbeck Independent School District, also states and represents that he has read this Mutual Release of All Claims in full detail; that the mediation agreement that formed the basis of this Mutual Release was reviewed by the full Board of Trustees of the Groesbeck ISD in a meeting legally called and held on January 15, 2001, for the purpose of reviewing the mediation agreement of the parties, and for the purpose of approving the same, and for the purpose of authorizing Mr. Charles Little, on behalf of the Groesbeck ISD Board of Trustees, to execute this Mutual Release evidencing the approval of the majority of the Board of Trustees of the Groesbeck ISD; that the mediation agreement was explained to the full Board of Trustees of the Groesbeck ISD in full detail by the duly-licensed attorney

that represents the Released Parties, Andrew Chance; that he is competent and authorized to enter into this Agreement and Release on behalf of the Board of Trustees of the Groesbeck ISD; that he is under no legal disability; that he is not now undergoing any psychiatric or psychological treatment which would impair his ability to understand or consent to this Release; that no guardianship exists at this time for him; that the Groesbeck ISD has not assigned all or any part of the causes of action that could have been alleged by it to any person or entity; that he understands that the settlement evidenced hereby is the final settlement of all claims between Claimants and the Released Parties; and that the Groesbeck ISD has voluntarily entered into the settlement evidenced hereby of its own free will in consideration of the acts and promises set forth herein.

Taxable court costs incurred by Claimants in the amount of $7337.04 shall be paid by or on behalf of Groesbeck ISD by check made payable to Claimants on or before January 31, 2001.

Signed this 31st day of January, 2001.

/s/ Mike Adams
Mike Adams, Claimant

/s/ Allison Adams
Allison Adams, Claimant

VERIFICATION

THE STATE OF TEXAS §
§
COUNTY OF McLENNAN §

BEFORE ME, the undersigned Notary Public, on this day personally appeared Mike Adams, who, known to me to be a credible person and who, being by me duly sworn, on her oath deposed and said that he is a Claimant in the above-entitled Mutual Release of All Claims; that he has read the above and foregoing Mutual Release of All Claims; and that he is cognizant of the statements, representations and acknowledgements of Claimant set forth therein and that they are true and correct.

MARY W. KELLEY
Notary Public
[SEAL] STATE OF TEXAS
My Commission
Expires 04/12/2001

/s/ Mary W. Kelley
Notary Public, in and
for the State of Texas

THE STATE OF TEXAS §
§
COUNTY OF McLENNAN §

BEFORE ME, the undersigned Notary Public, on this day personally appeared Allison Adams, who, known to me to be a credible person and who, being by me duly sworn, on her oath deposed and said that she is a Claimant in the above-entitled Mutual Release of All Claims; that she has read the above and foregoing Mutual Release of All Claims; and that she is cognizant of the statements, representations and acknowledgements of Claimant set forth therein and that they are true and correct.

MARY W. KELLEY
Notary Public
[SEAL] STATE OF TEXAS
My Commission
Expires 04/12/2001

/s/ Mary W. Kelley
Notary Public, in and
for the State of Texas

The above agreement and all of its terms were fully explained to the above Claimants prior to the execution of same, and are hereby approved.

/s/ LaNelle L. McNamara
LaNelle L. McNamara,
Attorney for Claimants

Signed this 31st day of January, 2001

GROESBECK ISD

BY: /s/ Charles D. Little
Mr. Charles Little,
President,
Board of Trustees

VERIFICATION

THE STATE OF TEXAS §
§
COUNTY OF LIMESTONE §

BEFORE ME, the undersigned Notary Public, on this day personally appeared Mr. Charles Little, known to me to be a credible person and who, being by me duly sworn, on his oath deposed and said that he is the President of the Groesbeck ISD Board of Trustees, and that he is authorized to make this affidavit on behalf of the Groesbeck ISD, and does so for the said party; and that he has read and understands the above and foregoing Mutual Release of All Claims; and that he is cognizant of the

statements, representations and acknowledgements of Groesbeck ISD set forth therein and that they are true and correct.

[SEAL]	ANN MOTAL My Commission Expires April 28, 2001	/s/ Ann Motal Notary Public, in and for the State of Texas

Signed this 31st day of January, 2001.

/s/ Charles D. Little
Mr. Charles Little,
Individually

/s/ Aleece E. McBay
Ms. Aleece McBay,
Individually

/s/ Glynis Rosas
Dr. Glynis Rosas,
Individually

VERIFICATION

THE STATE OF TEXAS §
§
COUNTY OF LIMESTONE §

BEFORE ME, the undersigned Notary Public, on this day personally appeared Mr. Charles Little, Ms. Aleece McBay, and Dr. Glynis Rosas, known to me to be a credible persons and who, being by me duly sworn, on their oaths deposed and said that they have read and understand the above and foregoing Mutual Release of All Claims; and that they are cognizant of the statements, representations

and acknowledgements set forth therein and that they are true and correct.

[SEAL]	ANN MOTAL My Commission Expires April 28, 2001	/s/ Ann Motal Notary Public, in and for the State of Texas

The above agreement and all of its terms were fully explained to Mr. Charles Little, President and representative of Groesbeck ISD, and to Mr. Charles Little, individually, and to Ms. Aleece McBay, individually, and to Dr. Glynis Rosas, individually, prior to the execution of same, and are hereby approved, and the undersigned acknowledges that a signature delivered by facsimile transmission is deemed to be an original for purposes of this Mutual Release.

Roger Hepworth
Attorney for Released Parties

Signed this ___ day of January, 2001.

Mr. Charles Little,
Individually

Ms. Aleece McBay,
Individually

Dr. Glynis Rosas,
Individually

VERIFICATION

THE STATE OF TEXAS §
§
COUNTY OF LIMESTONE §

BEFORE ME, the undersigned Notary Public, on this day personally appeared Mr. Charles Little, Ms. Aleece McBay, and Dr. Glynis Rosas, known to me to be a credible persons and who, being by me duly sworn on their oaths deposed and said that they have read and understand the above and foregoing Mutual Release of All Claims; and that they are cognizant of the statements, representations and acknowledgements set forth therein and that they are true and correct.

Notary Public, in and
for the State of Texas

The above agreement and all of its terms were fully explained to Mr. Charles Little, President and representative of Groesbeck ISD, and to Mr. Charles Little, individually, and to Ms. Aleece McBay, individually, and to Dr. Glynis Rosas, individually, prior to the execution of same, and are hereby approved, and the undersigned acknowledges that a signature delivered by facsimile transmission is deemed to be an original for purposes of this Mutual Release.

/s/ Roger Hepworth
Roger Hepworth
Attorney for Released
Parties

PLAINTIFF'S EXHIBIT 3

GROESBECK INDEPENDENT SCHOOL DISTRICT
P.O. BOX 559
GROESBECK, TEXAS 76642-0559

Glynis Rosas, Ed. D. Phone Number 254-729-3808
Superintendent of Schools Fax Number 254-729-5167

April 1, 2001

To Whom it May Concern:

Michael Wayne Adams was first employed by the Groesbeck Independent School District in 1971 as a science teacher. In 1972, he assumed additional duties as a member of our coaching staff. In 1980, he became the girls' athletic director, but he also continued to serve as the Head Coach of high school girls basketball, high school track coach – girls' track, and boys and girls cross country. In 1998, the Groesbeck Board of Trustees revised the organizational structure of the Athletic Program and the Boys Athletic Director position and Girls Athletic Director position were merged into a single position. Coach Adams assumed the duties of the Middle School Girls Athletic Coordinator and continued to coach and teach at Groesbeck until July of 2000.

Mr. Adams has consistently received good teaching evaluations throughout his career at Groesbeck ISD. He achieved and maintained Level III Career Ladder Status as a teacher.

During the time that he coached, The Lady Goats high school basketball team won 13 district championships and three regional championships. They were state runners-up in basketball in 1984 and were state semifinalists in 1990. The Lady Goats won the state title in 1996. Many

individual players received post-season honors including all-district, all-area, all-regional, and all-state. Coach Adams has been selected as district coach of the year numerous times, selected Central Texas Coach of the Year in 1996, and was nominated Coach of the Year for TABC in 1996. He coached the TABC State All-Star Basketball team twice – in 1989 and 1995 and was nominated again to coach the all stars in 1996. Coach Adams career coaching record in basketball is 589 wins and 266 losses.

The Lady Goats track program was equally successful during Coach Adams' tutelage. The team won 14 district championships, three regional championships, and one state championship. In fact the track team won the state title in 1996, only two months after the basketball team won its state title. Groesbeck is the only Division 3-A school that has two state championships in the same school year. The Lady Goats competed in the state track meet for 21 of the 26 years that Mr. Adams coached them. Individual players have also been state track champions in various individual events and relay events. Two Lady Goat athletes hold state conference records. Two Lady Goats achieved All-American recognition and in 1985, a Lady Goat was selected to be on a U.S. track team that competed in Seoul, Korea.

Groesbeck High School cross country teams, both boys and girls, have also won various district championships, and have advanced to regional and state competition.

More than 30 Lady Goats, coached by Mr. Adams, have continued their education through athletic scholarships awarded to them by various colleges and universities.

Coach Adams is a member of the Texas Girls Coaching Association and has served as regional director, first vice

president, and president. He has also served as a Regional Director of the Texas Association of Basketball Coaches.

Sincerely,

/s/ G. Rosas
Glynis Rosas, Ed. D.
Superintendent

PLAINTIFF'S EXHIBIT 2

April 19, 2001

Groesbeck ISD Board of Trustees
1202 N. Ellis
Groesbeck, Texas 76642

Dear Trustees:

Under the circumstances existing at this time, I hereby tender my resignation from employment with the Groesbeck ISD.

I understand that this resignation does not mean that I may not seek re-employment with the District in the future. Obviously, I expect to maintain an association with the District since my son is currently enrolled in kindergarten and my daughter will begin kindergarten next year. Whether I am a parent and/or an employee, I look forward to continuing my involvement with the Groesbeck ISD.

Very truly yours,

/s/ Michael Adams
Michael Wayne Adams

PLAINTIFF'S EXHIBIT 8

(date stamped Oct 22 2001)

GROESBECK INDEPENDENT SCHOOL DISTRICT
P.O. BOX 559, GROESBECK, TEXAS 76642-0559

Phone Number 254-729-3808 Fax Number 254-729-5167

EMPLOYMENT APPLICATION FOR PROFESSIONAL PERSONNEL

We consider applicants for all positions without regard to race, color, national origin, age, religion, sex, marital status, veteran or military status, the presence of a medical condition, disability, or any other legally protected status.

An Equal Opportunity Employer

Personal Data	Date of application October 19, 2001 Social Security number XXXXX8797
	Name Adams *Last* Michael *First* W *Middle Initial*
	Current address 713 LCR 646 *Street/Box* Thornton *City* TX *State* 76687 *ZIP Code*
	Other address where you may be reached _____
	Work phone 254 385-6651 Home phone 254 385-6651
	Other name that may appear on records _____ (*Used only for reference checks*)

BEST AVAILABLE COPY

Position Data

List the position(s) you are applying for Girls Middle School Coach

Credentials included with application

- ☒ Résumé
- ☒ All teaching and professional certificates or licenses on file @ GISD
- ☒ All transcripts showing degrees on file @ GISD

Date you can begin work October 22 2001

Have you been employed by Groesbeck ISD in the past? ☑ Yes ☐ No

If you answered yes, provide dates of employment 1971-2000

Education/Training

Name and location of schools attended	Course of study and major/ minor	Diploma, degree certificate, or license held	Year graduated (*College only*)
Sam Houston State University Huntsville, TX	Education Phys. Edu.	Degree Master of Education	8-12-72
Sam Houston State University Huntsville, TX	Phy. Edu. Biology	Degree B.A.T.	8-23-69
Groesbeck High School Groesbeck, TX		Diploma	May 1966

Certification

Certificate or license currently held:

- ☐ None
- ☒ Valid Texas
- ☐ Valid Other State
- ☐ Texas Emergency
- ☐ Texas One-Year: Expires _____
- ☐ Texas Temporary Administrative: Expires _____

Areas of Specialization:

- ☐ Administrator
- ☐ Superintendent
- ☐ Principal
- ☐ Midmanagement Administrator
- ☐ Elementary
- ☐ Elementary and Kindergarten
- ☒ Secondary (Jr./Sr. High)
- ☐ All-Level Art
- ☐ All-Level Health and PE
- ☐ All-Level Music
- ☐ Librarian
- ☐ Counselor
- ☐ Special Education (specify) _____
- ☐ Vocational (specify) _____
- ☐ Nurse
- ☐ Visiting Teacher
- ☐ Supervisor
- ☐ Other (specify) _____

Teaching Experience

List teaching experience beginning with most recent years.

Name and location of school	Type of assignment	Dates taught	Reason for leaving
Groesbeck ISD	Teacher/Coach Administrator	1971-2000	
Hubbard ISD	Teacher/Coach	1969-1971	Job in Hometown

Other Work Experience

Please provide a list of all other jobs or administrative positions you have held in the past 10 years. Attach additional sheets if necessary. Attach résumé if available.

School district/ firm name	Position/title	Dates employed	Reason for leaving
Groesbeck ISD	Girls Athletic Director	1971-1998	Assigned to Middle School
Groesbeck ISD	Girls Coor.	1998-2000	

Professional Data

Please list relevant professional activities. Omit references to organizations that would reveal race, age, ethnic origin, or religion.

Papers/articles published Articles in TGCA Newsletter; articles in TABC Newsletters

Seminars/workshops conducted speaker many times at Annual Summer Clinic TGCA.

Other related professional activities served as President, First Vice-President, Regional Director Texas Girls Coaching Association; TABC Regional Director

General Information

Do you have a relative who serves on the Groesbeck ISD Board of Education?

☐ Yes ☒ No If yes, please provide the relative's name and relationship: _____

Have you ever been convicted of or plead guilty or no contest (nolo contendre) to a felony or offense involving moral turpitude (including, but not limited to, theft rape, murder, swindling, and indecency with a minor)? ☐ Yes ☒ No

If yes, please state where, when, and the nature of the offense; indicate whether the charges were dismissed as a condition of probation, suspension, or deferred adjudication:

_____

_____

(A felony conviction is not an automatic bar to employment. The district will consider the nature, date, and relationship between the offense and the position for which you are applying.)

References

Please list references the district can contact regarding your work history. Please include all managers and supervisors who evaluated or supervised your performance at your last two employers.

Full name of reference	School district/ firm name	Mailing address	Position/ title	Area code/ phone number
Dr. Glynis Rosas	Gloesbeck ISD	1202 N. Ellis Groesbeck, TX 76642	Supt.	254 729-3808
Mr. Billy McKown	TGCA Executive Director	P.O. Box 1 Abbott, TX 76621	Executive Director	254 582-3678

	Mr. Bobby Reed	Attorney	217 W. State St. Groesbeck, TX 76642	Attorney	254 729-2720
	Karen Golden	Groesbeck ISD Middle School Principal	502 W. Corporation Groesbeck, TX 76642	Principal	254 729-3435

Verification

I hereby affirm that all information provided in this application is true and accurate to the best of my knowledge and understand that any deliberate falsifications, misrepresentations, or omissions of fact may be grounds for rejection of may application or dismissal from subsequent employment.

I authorize the references listed on the previous page to give you any and all information concerning my previous employment and any pertinent information they may have, personal or otherwise, and release all such parties from liability for any damage that may result from furnishing the same to you.

I understand that the district is authorized by Texas Education Code §22.083 to obtain criminal history record information on applicants the district intends to employ.

/s/ Michael Adams — 10-19-2001
Signature — Date

This application becomes the property of the district. The district reserves the right to accept or reject it. This application shall be considered active for a period not to exceed 365 days. Any applicant wishing to be considered for employment beyond this time period may inquire as to whether or not applications are being accepted at that time.

Criminal History Record Information Addendum

Confidential*

The Groesbeck Independent School District is authorized by state law to obtain criminal history record information on applicants the district intends to employ (Texas Education Code §22.083). The information requested below is necessary to obtain criminal history record information.

Please print

Name ADAMS (Last) MICHAEL (First) WAYNE (Middle)

Social Security number XXX XX 8797

Date of birth 6-3-1948

Sex: ☒ Male ☐ Female

Ethnicity: ☐ Black ☒ White/Other

I understand that the information I am providing about age, sex, and ethnicity will not be used to determine eligibility for employment, but will be used *solely* for the purpose of obtaining criminal history record information.

/s/ Michael Adams
Signature

10-19-2001
Date

---

* This form will be removed from the application and filed separately in the personnel office.

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Johnnie Wilson

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) | B. Date of Delivery: 11-30-01

C. Signature: ☐ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Copy from service label)
7000 0520 0020 4553 8836

PS Form 3811, July 1999 Domestic Return Receipt 102595-00-M-0952

PLAINTIFF'S EXHIBIT 9

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Richey Cutrer

1202 N Ellis
Breckenridge TX 76642

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly): L Collins
B. Date of Delivery: 11-29-01

C. Signature
X L Collins
☐ Agent
☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Copy from service label)
7000 0520 4553 8843

PS Form 3811, July 1999 Domestic Return Receipt 102595-00-M-0952

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